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12 CAMPOS, and DIAZ
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15 UNITED STATES DISTRICT COURT
16
17 CENTRAL DISTRICT OF CALIFORNIA

18 OMAR ARNOLDO RIVERA
19 MARTINEZ; ISAAC ANTONIO
20 LOPEZ CASTILLO; JOSUE
21 VLADIMIR CORTEZ DIAZ; JOSUE
22 MATEO LEMUS CAMPOS;
23 MARVIN JOSUE GRANDE
24 RODRIGUEZ; ALEXANDER
25 ANTONIO BURGOS MEJIA; LUIS
26 PENA GARCIA; JULIO CESAR
27 BARAHONA CORNEJO, as
28 individuals,

Plaintiffs,

v.
18 THE GEO GROUP, Inc., a Florida
19 corporation; the CITY OF
20 ADELANTO, a municipal entity; GEO
21 LIEUTENANT DIAZ, sued in her
22 individual capacity; GEO
23 SERGEANT CAMPOS, sued in his
24 individual capacity; SARAH JONES,
25 sued in her individual capacity; THE
26 UNITED STATES OF AMERICA;
27 CORRECT CARE SOLUTIONS,
28 INC.; and DOES 1-10, individuals,

Defendants.

Case No. 5:18-cv-01125-SP

**DEFENDANTS' NOTICE OF
MOTION AND MOTION IN
LIMINE NO. 3 TO EXCLUDE
MEDIA REFERENCES;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT**

*[Declaration of Carmen M. Aguado and
[Proposed] Order filed concurrently
Herewith]*

Pretrial Conference: January 21, 2020
Time: 10:00 a.m.
Courtroom: 3
Judge: Hon. Sheri Pym

1 TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on January 21, 2020 at 10:00 a.m., or as
3 soon thereafter as this matter may be heard in Courtroom 3 of the above-captioned
4 Court, located at 3470 12th St., 3rd Floor, Riverside California, 92501. Defendants
5 THE GEO GROUP, INC. (“GEO”), CITY OF ADELANTO (“City”), CAMPOS,
6 and DIAZ will move this Court for an Order to preclude Plaintiffs, their counsel
7 and any witnesses from introducing any evidence from or testimony related to
8 media articles (from radio, television, newspapers and the internet) pertaining to (1)
9 this federal civil rights action, (2) the incident that gives rise to the action, and/or
10 (3) other unrelated incidents at Adelanto ICE Processing Detention Facility or that
11 involve Defendants.

12 The Motion is based upon the Notice of Motion, the attached Memorandum
13 of Points and Authorities, the pleadings, records and files in this action, and such
14 other matters as may properly come before the Court.

15 This motion is made following an attempt to meet and confer with Plaintiffs’
16 counsel pursuant to Local Rule 7-3. *See* Decl. of Carmen M. Aguado (“Aguado
17 Decl.”) at ¶ 5.

18

19 Dated: December 31, 2019

BURKE, WILLIAMS & SORENSEN, LLP

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21

By: /s/ Carmen M. Aguado
22 Susan E. Coleman
Carmen M. Aguado

23

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Attorneys for Defendants
THE GEO GROUP, INC., CITY OF
ADELANTO, CAMPOS, and DIAZ

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION.

Plaintiffs are eight (8) civil detainees that were detained at the Adelanto ICE Processing Detention Facility (“Facility”) in June 2017.¹ On June 12, 2017, Plaintiffs engaged in what they believe was the start of a hunger strike (however, it is unclear whether any GEO personnel understood their intent) in the dayroom of their dorm. Plaintiffs chose to participate in the strike during a critical period of time at the Facility that required all detainees to be at their bunks (count). If count is not completed within a specified time period, the entire Facility is placed in an emergency state. Despite numerous commands to return to their bunks, and warnings that OC spray may be used to compel their compliance, Plaintiffs refused to listen and instead remained in the dayroom to bring attention to their grievances. Their noncompliance not only caused a major disruption in the dorm, but it threatened to disrupt the entire Facility as they were delaying count. As a result of their noncompliance and the major disturbance that resulted from their conduct, Defendants Lt. Diaz and Sgt. Campos (“Defendants”), former employees of Defendant GEO, deployed short bursts of OC spray (3 in total).

Through this Motion in Limine No. 3, Defendants move to exclude Plaintiffs from introducing any media articles (from radio, television, newspapers and the internet) pertaining to (1) this federal civil rights action, (2) the incident that gives rise to the action, and/or (3) other unrelated incidents at Adelanto ICE Processing Detention Facility to prove that Defendants are liable for their alleged damages. This should not be allowed, as these media references and third party complaints are hearsay and unduly prejudicial.

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¹ In May 2011, GEO entered into contract with U.S. Immigration & Customs Enforcement (ICE) for the detention and care of immigrant detainees at the Facility, which houses immigrant detainees, through an intergovernmental service agreement with the City of Adelanto, which owns the property.

1 **II. STANDARD FOR MOTIONS IN LIMINE.**

2 A motion in limine is a procedural device to obtain an early and preliminary
 3 ruling on the admissibility of evidence. *Goodman v. Las Vegas Metro. Police Dep't*,
 4 963 F. Supp. 2d 1036, 1046-47 (D. Nev. 2013). Although the Federal Rules of
 5 Evidence do not explicitly authorize a motion in limine, the Supreme Court has
 6 held that trial judges are authorized to rule on motions in limine pursuant to their
 7 authority to manage trials. *Luce v. United States*, 469 U.S. 38, 41 n. 4, 105 S.Ct.
 8 460, 83 L.Ed.2d 443 (1984). A motion in limine is a request for the court's
 9 guidance concerning an evidentiary question. *See Wilson v. Williams*, 182 F.3d 562,
 10 570 (7th Cir. 1999).

11 **III. MEDIA ARTICLES RELATED TO THE INCIDENT THAT GIVES**
 12 **RISE TO THIS LITIGATION ARE HEARSAY AND**
 13 **UNTRUSTWORTHY.**

14 Several news stories have been written pertaining to Plaintiffs' strike and the
 15 claims within this lawsuit, some of which were produced by Plaintiffs during
 16 discovery. Aguado Decl. at ¶ 3, Ex. "A" [Articles Related to Incident and Lawsuit].

17 Any articles should be excluded because media articles are generally
 18 considered hearsay under Federal Rules of Evidence, Rule 801(c) because they are
 19 offered to prove the truth of the matter asserted. *Green v. Baca*, 226 F.R.D. 624,
 20 637 (C.D. Cal. 2005). "Even when the actual statements quoted in a[n] ... article
 21 constitute nonhearsay, or fall within a hearsay exception, their repetition in the
 22 newspaper [or other media source] creates a hearsay problem. Thus, statements in
 23 [articles] often constitute double hearsay." *Green, supra*, 226 F.R.D. at 637-38.

24 In the present case, media articles that Plaintiffs may seek to introduce are
 25 double hearsay and should be excluded from this trial. Even if Plaintiffs were to
 26 assert the articles are admissible under the residual hearsay exception found in Rule
 27 807, their argument must fail. Rule 807 provides: "A statement not specifically
 28 covered by Rule 803 or 804 but having equivalent circumstantial guarantees of

1 trustworthiness, is not excluded by the hearsay rule, if the court determines that (A)
 2 the statement is offered as evidence of a material fact; (B) the statement is more
 3 probative on the point for which it is offered than any other evidence which the
 4 proponent can procure through reasonable efforts; and (C) the general purposes of
 5 these rules and the interests of justice will best be served by admission of the
 6 statement into evidence.

7 However, a statement may not be admitted under this exception unless the
 8 proponent of it makes it known to the adverse party sufficiently in advance of the
 9 trial or hearing to provide the adverse party with a fair opportunity to prepare to
 10 meet it, the proponent's intention to offer the statement and the particulars of it,
 11 including the name and address of the declarant." Fed. R. Evid. 807. In this case,
 12 there are countless articles which may have been "published." Some of these
 13 articles are known to Defendants, but Defendants suspect there may be additional
 14 articles unknown to them. Therefore, Plaintiff must not get the benefit of Rule 807.

15 In addition, "the articles [Plaintiffs] seek[] to introduce lack the
 16 circumstantial guarantees of trustworthiness that are required for admission under
 17 Rule 807," as Plaintiffs have not offered any independent evidence to corroborate
 18 the information contained in the articles. *Green, supra*, 226 F.R.D. at 639. Nor are
 19 the articles the best evidence of what was said; testimony from the reporters,
 20 however, is. *Id.* Further, Defendants would be at a tactical disadvantage if the
 21 articles are admitted and the reporters are not called to testify, as defense counsel
 22 would have no opportunity to cross-examine the actual reporters.

23 Therefore, in this case, the articles are double hearsay, not the best evidence
 24 of what was said or done, and untrustworthy since there are no independent sources
 25 to corroborate the articles' information. In addition, the articles are irrelevant and
 26 prejudicial and therefore inadmissible. Rule 402 of the Federal Rules of Evidence
 27 provides in relevant part, "Evidence which is not relevant is not admissible." The
 28 present articles are not relevant to the issues in this case. Specifically, they do not

1 establish that Plaintiffs constitutional or state law rights were violated, nor are they
 2 admissible as evidence of such.

3 Assuming, however, the Court were to find the articles are relevant to this
 4 case, they must still be excluded under Rule 403 of the Federal Rules of Evidence
 5 as unduly prejudicial. Rule 403 specifically provides, “[a]lthough relevant,
 6 evidence may be excluded if its probative value is substantially outweighed by the
 7 danger of unfair prejudice, confusion of the issues, or misleading the jury, or by
 8 considerations of undue delay, waste of time, or needless presentation of
 9 cumulative evidence.” Fed. R. Evid. 403. Applying the principles of Rule 403 here,
 10 the Court should conclude the articles are more prejudicial than probative because
 11 they are inaccurate, and based on hearsay and speculation. Moreover, the articles
 12 will confuse the issues, mislead the jury, cause undue delay and waste time because
 13 the articles need to be explained and reporters may need to testify about them.
 14 Evidence that this matter was actually the subject of a newspaper article alone is
 15 likely to suggest to the jury that Plaintiffs’ claims have merit.

16 Therefore, no such media articles should be admitted – or discussed - at the
 17 time of trial since Plaintiffs bear the burden of proof. If evidence of the articles
 18 attached as Exhibit “A,” or any other such articles or media are admitted at the time
 19 of trial, Defendants will suffer unfair prejudice.

20 **IV. LIKEWISE, MEDIA ARTICLES RELATED TO OTHER INCIDENTS**
 21 **AT THE FACILITY OR THAT INVOLVE DEFENDANTS ARE**
 22 **HEARSAY AND UNTRUSTWORTHY.**

23 In discovery, Plaintiffs produced the following:

- 24 • An article titled “Why Immigrant Detainees In California Just Launched A
 25 Hunger Strike” dated November 2, 2015(Bates Stamp No.: P000419-425);
 26 • An article titled, “GEO Group Whistleblower Exposes First Amendment
 27 Violations, Lack of Officer Training, and Poor Conditions at the Adelanto
 28 Detention Center” dated May 19, 2016 (Bates Stamp No.: P000416-418);

- 1 • An article titled “Third Death in Immigration Detention Makes the Adelanto
2 Detention Center the Deadliest Facility in 2017” dated June 6, 2017 (Bates
3 Stamp No.: P000426);
4 • An article titled “California: Immigrants go on hunger strike at Adelanto
5 Detention Facility” dated July 8, 2017; and
6 • An article titled “We don’t feel OK here” dated August 8, 2017 (Bates Stamp
7 No.: P000427-432).

8 The aforementioned articles are related to incidents that either allegedly occurred
9 years in advance or months after the incident that gives rise to this litigation – i.e.,
10 they are wholly irrelevant to the claims in this case. Aguado Decl. at ¶ 4, Ex. “B”
11 [Articles Produced by Plaintiffs]. To the extent that Plaintiffs introduce the
12 aforementioned media articles or any other articles concerning other unrelated
13 instances of alleged misconduct, including but not limited to those concerning other
14 use of force incidents, the alleged conditions at the Facility, and alleged
15 mistreatment of immigrant detainees at the Facility, this evidence should be
16 excluded because, as discussed above, media articles are generally considered
17 hearsay.

18 Moreover, this evidence is barred by Rule 404(b)(1) of the Federal Rules of
19 Evidence, which reads, “Evidence of a crime, wrong, or other act is not admissible
20 to prove a person’s character in order to show that on a particular occasion the
21 person acted in accordance with the character.” To the extent that Plaintiffs seek to
22 introduce articles of alleged other bad acts, their only motivation for doing so
23 would be to persuade the jury that Defendants acted in accordance with the
24 character displayed by the alleged other bad acts. *See also* Fed. R. Evid. 402
25 (irrelevant evidence is not admissible). 403 (unduly prejudicial).

26 Finally, Rule 402 of the Federal Rules of Evidence provides in pertinent part,
27 “Evidence which is not relevant is not admissible.” Media articles concerning other
28 incidents are irrelevant and prejudicial and therefore inadmissible. Specifically,

1 they do not establish that Plaintiffs' state law or constitutional rights were violated
2 as alleged in their operative pleading. Assuming, however, this Court were to find
3 the evidence is relevant to this case, it must still be excluded under Rule 403 of the
4 Federal Rules of Evidence, which provides as follows:

5 "Although relevant, evidence may be excluded if its
6 probative value is substantially outweighed by the danger
7 of unfair prejudice, confusion of the issues, or misleading
the jury, or by considerations of undue delay, waste of
time, or needless presentation of cumulative evidence."

8 Applying the principles of Rule 403 here, the Court should conclude such evidence
9 is more prejudicial than probative because articles may be inaccurate and are based
10 on hearsay and speculation. Moreover, articles regarding other incidents/bad acts
11 will confuse the issues, mislead the jury, cause undue delay and waste time because
12 the evidence will need to be explained and reporters may need to testify the articles.

13 **V. CONCLUSION.**

14 For the foregoing reasons, Defendants respectfully requests that this Court
15 grant Defendants' Motion in Limine No. 3 to preclude Plaintiffs, their counsel and
16 any witnesses from introducing any evidence or testimony from media articles
17 (from radio, television, newspapers and the internet) pertaining to (1) this federal
18 civil rights action, (2) the incident that gives rise to the action, and/or (3) other
19 unrelated incidents at Adelanto ICE Processing Detention Facility or that involve
20 Defendants.

21 Dated: December 31, 2019

22 BURKE, WILLIAMS & SORENSEN, LLP

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